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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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THEODORE D. WUGOFSKI

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02/18/2009

GATEWAY, INC.

ATTN: PATENT ATTORNEY

610 GATEWAY DRIVE

MAIL DROP Y-04

N. SIOUX CITY, SD 57049

EXAMINER

HUYNH, SON P

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/002,906	Applicant(s) WUGOFSKI ET AL.	
	Examiner SON P. HUYNH	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-59,61-69 and 71-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-59,61-69 and 71-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 52-59, 61-69, 71-73 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues the specification provides the following description of the favorite channels service 8: [0031] ...The favorite services 8 provides both the functionality to maintain the favorite list... In other words, the Favorites Services 8 can either provide the favorites list management function itself ("Favorites Services 8 provide favorites list management functions") support "removing said channel from the favorite list...without user intervention," as recited in claim 56 and 66 (pages 8-9). The Specification, for example, at pages 10-12, explains how the favorite channels should be removed from the list at least once per time slot. For example, the specification states that "if the timeslots are in 30 minutes increments, the system will likely want to update no less than every 30 minutes in order to maintain consistent duration of events." Thus, the system updates the favorites list (e.g., every 30 minutes) to add new channels to the list and delete channels from the list after the content of interest is aired. According, it is respectfully submitted that the feature pertaining to timing of the favorites list updating ("after the content has aired") is disclosed at least by this passage of the specification (page 10). This argument is respectfully traversed.

the examiner agrees the specification, page 8, describes Favorites services 8 provides favorites list management functions...an application calls favorite services 8 when it wishes to add or delete an item such as a channel from a given favorite list. However, this section does not describes favorite services 8 provides list management function or an application call favorite calls favorite service without user intervention (for example, this function could be performed in response to user intervention such as user request and the application calls the favorite service to perform the function). Therefore, this section does not support "removing said channel from the favorite list...without user intervention," . Specification, at pages 10-12, describes updating the EPG. However, this section and section in page 8 do not disclose what channel and when the channel is removed. Therefore, these sections (or the specification) do not support "removing said channel from the favorites list after the content has aired, the channel being removed without user intervention."

With respect to applicant's argument regarding rejection under 101 (pages 10-11), the Examiner respectfully disagrees.

Claims 62-69, 71, 73 recite "a computer readable medium having computer-executable instructions stored thereon for execution on a computer, the computer executable instructions comprising the steps of:" do not necessarily define structural and functional interrelationship between computer executable instructions and computer component which permit computer program's functionality to be realized because the computer readable medium is not necessarily being executed by a computer. For example, a CD or floppy disk having computer readable executable instructions/software code,

Art Unit: 2424

however, when the CD or floppy disk is not implemented and/or not being executed by the a computer/processor, computer program's functionality in the floppy disk/CD is not realized. Therefore, the claimed subject matter is not statutory.

With respect to rejection under 103, Applicant argues the cited art do not discloses or suggest "receiving inputs from a user specifying a theme for the favorite channels" and "searching available channels for content matching the theme" because the art relied upon in the pending 103 rejection involves the user of personal information profile for the user along with an indicator of the user's current mood (pages 12-13). This argument is respectfully traversed.

. The section that Applicant point out in Hendricks '785 (col. 33, line 50-col. 34, line 8) is just one of the embodiments in Hendricks' disclosure. Even though in this section, Hendricks discloses data in the particular viewer's personal profile, subscriber mood information... are entered by the user and this information are used to search channels for content matching the theme.

In addition, Hendricks discloses variety methods that a set top terminal can suggest a channel or program for viewing and all or these methods are used information entered by the user (for example, "intelligent" method used information gathered by user viewing behaviors, responsive methods used information entered directly be the user). The information entered including selection of theme such as movie, category, etc. and this information is used to search available channels for content that matching the theme entered (see include, but are not limited to, figures 25b-26; H785: figures 11a-11d, col. 30, line 31-col. 31, line 62, col. 33, line 1-col. 37, line 43).

Art Unit: 2424

Thus, Hendricks discloses “receiving inputs from a user specifying a theme for the favorite channels” (interpreted as user selecting a theme directly as indicated in figures 11a, 11d (H785), or user selection the theme when create viewer profile or viewing behavior, etc. and “searching available channels for content matching the theme” (interpreted as searching available channels for content matching the theme/genre/category as selected by the user.

For the reasons given above, rejections on the claims are analyzed as discussed below.

Claims 1-51, 60, and 70 have been canceled.

Claim Rejections - 35 USC § 112

2. Claims 56 and 66 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 56 and 66 recite the limitation “removing said channel from the favorite list **after the content has aired, the channel being removed without user intervention**” which is not support by the specification. The specification merely describes adding an item to

Art Unit: 2424

a favorite list, and removing an item from a favorite list (page 8, lines 12-21 – see also discussion in “Response to Arguments” above).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 52-59, 61-69, 71-72 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 62-69, 71, 73 recite "a computer readable medium having computer-executable instructions stored thereon for execution on a computer, the computer executable instructions comprising the steps of:" do not necessarily define structural and functional interrelationship between computer executable instructions and computer component which permit computer program's functionality to be realized because the computer readable medium is not necessarily being executed by a computer. For example, a CD or floppy disk having computer readable executable instructions/software code, however, when the CD or floppy disk is not implemented and/or not being executed by the a computer/processor, computer program's functionality in the floppy disk/CD is not realized. Therefore, the claimed subject matter is not statutory.

Claims 52-59, 61 and 72 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The claimed method comprising receiving..., is broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2424

6. Claims 52-59, 61-69, 71-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (US 6,539,548) in view of Knee et al. (US 5,589,892).

Note: US 5,798,785 (referred to as H785) is continuation of Ser. No. 08/160,282 (Pat. No. 5,659,350; CIP of applications: 07/991,074; 08/160,280 (Pat. No. 5,600,364 – referred to as H364); 08/160,281 (Pat. No. 5,798,785); 08/160,193 (Pat. No. 5,734,853); 08/160,194 (Pat. No. 5,990,927); 08/160,283 (Pat. No. 5,682,195); 08/160,280 (Pat. No. 5,600,364). These applications are incorporated by reference (col. 1, lines 5-30). All the applications incorporated by references in their entireties in Patent No. 6,539,548 are treated as part of the specification of patent No. 6,539,548).

Regarding claim 52, Hendricks discloses a method of managing favorite channels relating to a user specified theme (e.g., favorite channels, most often watched channels) based on a user specified theme (e.g., movies, sports, etc.) – see include, but are not limited to, figures 32g-32h, 35a; Pat. No. 5,798,785: col. 28, line 64-col. 33, line 65, figures 11a-12b), the method comprising:

receiving inputs from a user specifying a theme (either select the theme/genre on the screen directly or when create user profile, or gather by monitoring viewer's behaviors - see include, but are not limited to, figures 25b-26; H785: figures 11a, 11d, col. 31, lines 34-62, col. 35, line 50-col. 37, line 42 and discussion in “Response to Arguments“ above);

Hendricks further discloses storing user profile including favorite theme for use to customize/suggest program (see include, but are not limited to, H785: col. 30, lines 34-65; H364: figures 11-12) and the selected category/genre are used to search for associate channels/content (see include, but are not limited to, H785: col. 30, lines 25-64, col. 33, lines 1-34, col. 35, line 49-col. 36, line 67). Thus, the theme/genre must be saved on a computerized system (e.g., set top terminal or head end) associated with a television receiver in response to receiving the input from the user so that the selected category/genre are used to search for program content/channels.

searching available channels for content matching the theme (e.g., search available channel for content matching selected category/genre - see include, but are not limited to, H785: col. 35, line 48-col. 37, line 43 and discussion in "Response to Arguments" above), wherein the searching is conducted within a predetermined number of time ahead of a current time (e.g., searching within a predetermined number of time such as next 30 minutes - see include, but are not limited to, H548: figures 21, 28a-28b, 32a-32e; col. 28, lines 36-42, col. 31, lines 20-43, col. 39, lines 10-16, col. 39, lines 65-col. 40, line 4; H785: col. 31-44, figure 14)

detecting a match between the theme and content scheduled to air on a channel from among the available channels (only content on the channels associated with the selected category/genre are listed - see include, but are not limited to, H785: col. 35, line 48-col. 37, line 43).

Hendricks further discloses displaying favorite channels (see include, but are not limited to, col. 33, lines 25-34, figure 12a). Thus, the channel is added into favorite list.

Hendricks also discloses updating movie list once or twice a week to keep in line with new movie releases (col. 36, lines 15-19). However, Hendricks does not explicitly disclose specifying theme for favorite channels, the channel is added to a favorites list in response to the detection of match for the theme, and wherein the timeslots are each a predetermined timeslots length long and the update frequency is no less than once per the predetermined timeslot length.

Knee discloses receiving input from a user specifying a theme for favorite channels and adding channel to a favorite list in response to detection of a match for the theme (see include, but are not limited to, col. 29, lines 4-47). Knee further discloses timeslots are each a predetermined timeslot length long (e.g., 30 minutes – see include, but are not limited to, figures 18-20, 25) and the update frequency is no longer less than once per the predetermined timeslot length (e.g., stored scheduled information can be updated on a periodic basis, such as daily or weekly - see include, but are not limited to, col. 10, lines 22-33; update daily or weekly is not less than predetermined timeslot length of 30 minutes). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks with the teachings as taught by Knee in order to yield predictable results such as to improve efficiency in channels selection/locate desired channel on television screen or to reduce displaying obsolete data to the user.

Art Unit: 2424

Regarding claim 53, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses providing a second favorite list (e.g., most watched channels list) based on usage habits of the user, wherein the computerized system detects matches to be added to the second favorite list by monitoring the usage habits of the user (see include, but are not limited to, H548: figures 25b-25d; H785: figure 12a, col. 35, lines 20-47; col.33, lines 14-34);

wherein the first favorite list is based on the user specified theme and is independent of a number of times the available channel have been viewed (see include, but is not limited to, Knee: col. 29, lines 4-47).

Regarding claim 54, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses searching, detecting and adding are conduct automatically without use intervention after the theme is saved on the computerized system (see include, but are not limited to, figures 25a-26, 32g-32h, 35a; H785: col. 28, line 66-col. 30, line 50, figures 11a-12d, col. 32, line 63-col. 37, line 44; Knee: col. 29, lines 4-47).

Regarding claim 55, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the computerized system associated with the television receiver is part of a convergence system configured to receive television signals from at least one of a group of signal provider

Art Unit: 2424

consisting of satellite television, cable television and terrestrial broadcast television (see include, but are not limited to, H548: figures 1-4).

Regarding claim 56, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee disclose updating channel in favorite channel list by removing/deleting particular channel without user intervention (see include, but are not limited to, H785: col. 33, lines 15-34; Knee: figures'8, 38).

Official Notice is taken that removing a channel from favorite channel after the content aired is well known in the art. For example, removing channel in recording list/favorite list after the content has aired. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks in view of Knee with the well-known teaching as taught in the art in order to yield predictable results such as to improve efficiency in favorite management, thereby allowing the user to follow channels in the favorite list easily.

Regarding claim 57, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses receiving second inputs from user specifying a sub-theme defining theme for the favorite channels (e.g., user selection of another category or sub-category and for displaying only channels associated with the second selected category or selected subcategory - see include, but are not limited to, Knee: figures 49-52).

Art Unit: 2424

Regarding claim 58, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the first input and second inputs are selected from a list of content descriptors (content descriptors on television screen - see include, but are not limited to, H548: figures 25b-26, Knee: figures 19, 49-51).

Regarding claim 59, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses searching being conducted in an electronic program guide (EPG) database associated with the at least one of a group providers in accordance with an update frequency (see include, but are not limited to, H785: col. 30, lines 40-64, col. 31, lines 34-57; col. 35, line 48-col. 37, line 42; Knee: figures 1, 47, 49-51, col. 29, lines 6-54).

Regarding claim 61, Hendricks in view of Knee discloses the method as discussed in the rejection of claim 52. Hendricks in view of Knee further discloses the timeslots are each 30 minutes in length (see include, but are not limited to, Knee: figures 18, 25). Knee further disclose stored scheduled information can be updated on a period basis such as hourly, weekly, or at any time when changes in scheduling or other factors warrant an update (col. 10, lines 22-33). Thus, the update frequency is no less than once every 30 minutes.

Art Unit: 2424

Regarding claims 62-69, 71, the limitations of the computer readable medium correspond to the limitations of the method as claimed in claims 52-61 are analyzed as discussed in the rejections of claims 52-59, 61.

Regarding claims 72-73, Hendricks in view of Knee further discloses the favorites list can either be updated automatically or can be updated by receiving input from a user (e.g., update by monitoring channel watched or by user's input information either directly or via viewer's profile - see include, but are not limited to, figures 25a-26, 32g-32h, 35a; H785: col. 28, line 66-col. 30, line 50, figures 11a-12d, col. 32, line 63-col. 37, line 44; Knee: col. 29, lines 4-47).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lett et al. (US 5,592,551) discloses searching future programs and updating program guide (col. 13, lines 4-30, col. 14, lines 15-37).

Milnes et al. (US 6,118,492) discloses guide system and method of operation.

Kearns (US 6,072,535) discloses sidebox display channel loop controller.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON P. HUYNH whose telephone number is (571)272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2424

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son P Huynh/
Primary Examiner, Art Unit 2424

February 12, 2009